

Definitions

Council means the Waverley Council and its successor;

“Land” means 194 – 214 Oxford Street and 2 Nelson Street, Bondi Junction being the whole or a part of Lots 10, 11, 12 and 13 in DP 260116, Lot 1 in DP 79947, Lot 16 in DP 68010, Lot 1 in DP 708295 and SP 34942.

Lot Burdened means the lot or lots subject to the Public Plaza as shown in the Plan of Easement;

Maintenance Schedule means the schedule approved by Council for the on-going maintenance of the Public Plaza including, but not limited to, all structures, Closed Circuit Television security system, landscaping and improvements as required and approved by and to the satisfaction of Council;

Plan of Easement means a plan of easement of the Public Plaza registered with this instrument;

Public Plaza means the site shown in the Plan of Easement with an area totaling approximately 311 sqm and limited in depth to the finished street level at No. 2 Nelson Street, Bondi Junction;

Registered Proprietor means the registered proprietor of the Lot Burdened from time to time and all their executors, assigns, transferees and successors in title to the Lot Burdened, including for avoidance of doubt any Owners Corporation in the meaning of *Strata Schemes Development Act 2015* (NSW).

“Strata Plan” means a plan of subdivision including either one or more strata scheme(s) or community scheme(s) registered on title of the Land.

Terms of Positive Covenant

1. The Registered Proprietor of the Lot Burdened will in respect of the Public Plaza:

- (a) regularly keep the Public Plaza clean and free from rubbish, weeds, food debris and spillages, unwanted and abandoned items, unauthorised posters and advertising, and the like to allow unobstructed and safe passage of members of public through the Lot Burdened in accordance with the Maintenance Schedule;
- (b) maintain, replace and repair at the sole expense of the Registered Proprietor in accordance with the Maintenance Schedule the Public Plaza to prevent deterioration or damage without delay so that the Public Plaza maintains and demonstrates presentable and safe character to the public to promote its enjoyment and use;
- (c) must provide to the satisfaction of Council upon request a Maintenance Schedule and on an ongoing basis keep records of maintenance and repairs undertaken by a suitably qualified professional, as per the Maintenance Schedule and must make these records available to

Council upon request;

(d) must provide a sinking fund that includes a plan for funding renovations to the Public Plaza on expiry of 20 years from the date of registration of the Strata Plan and every 20 years thereafter to satisfaction of Council and provide annual updates on financial performance of the fund to Council on the anniversary of the date registration of the Strata Plan.

(e) permit the Council or its authorised agents from time to time to enter and inspect the Public Plaza to determine its state of maintenance or repair for the compliance with the requirements of this covenant;

(f) must do all things reasonably necessary to ensure no modifications to the Public Plaza are made without the prior consent in writing of the Council;

(g) must do all things reasonably necessary to ensure the Public Plaza is operating in an efficient manner;

(h) comply with the terms of any written notice by the Council in respect to the requirements of this Covenant within the time stated in the notice.

2. Pursuant to Section 88F (3) of the Conveyancing Act 1919 (the Act) the Council shall have the following additional powers:-

(a) In the event that the Registered Proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the Public Plaza with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in Part 1 (e) above.

(b) the Council may recover from the Registered Proprietor in a Court of competent jurisdiction:

(i) any expenses reasonably incurred by it in exercising its powers under sub paragraph 2(a) hereof. Such expenses shall include reasonable wages for the Councils employees engaged in effecting the said work, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.

(ii) legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to Section 88F of the Act or providing any certificate required pursuant to Section 88G of the Act or obtaining any injunction pursuant to Section 88H of the Act.

3. Where there are two or more Registered Proprietors of the Lot Burdened the terms of this Covenant will bind them jointly and severally.

Name of Authority empowered to release, vary or modify this Positive Covenant is Waverley Council.

EXECUTION BY

**EXECUTED by WESTGATE BJ PTY LTD
(ACN 601 663 343)**

In accordance with section 127 of the
Corporations Act 2001

ELIA LEIS

Director/Secretary

IGAL LEIS

Director

EXECUTION BY

WAVERLEY COUNCIL by its authorised delegate pursuant to Section 378 Local Government Act 1993.

Authorised Delegate (signature)

Authorised Delegate (print full name)

I certify that I am eligible witness and that the delegate signed in my presence

Signature of Witness

Name of Witness

Address of Witness: